

**AGENDA**



**Recommendation for Council Action (Purchasing)**

<b>Austin City Council</b>	<b>Item ID:</b>	10753	<b>Agenda Number</b>	52.
<b>Meeting Date:</b>	November 10, 2011			
<b>Department:</b>	Purchasing			
<b>Subject</b>				
Approve an ordinance amending Chapter 2-7, Article 6 of the City Code relating to anti-lobbying and procurement.				
<b>Amount and Source of Funding</b>				
<b>Fiscal Note</b>				
<b>Purchasing Language:</b>				
<b>Prior Council Action:</b>	December 6, 2007 - Original adoption of current Anti-Lobbying Ordinance 20071206-045; October 20, 2011 - Approved Ordinance amendment on first reading.			
<b>For More Information:</b>	Byron Johnson, 974-2050; Sabine Romero, 974-2518			
<b>Boards and Commission Action:</b>	Recommended by the Ethics Review Commission.			
<b>MBE / WBE:</b>				
<b>Related Items:</b>				
<b>Additional Backup Information</b>				

On October 20, 2011, Council requested that the Ethics Review Commission review the proposed changes to the City of Austin's *Anti-Lobbying and Procurement* code. The Ethics Review Commission met in a special called meeting on Monday, October 24 and made the following suggestions. Staff has identified an opportunity to address the first comment in rules, and the second and third comment in the ordinance posted for this agenda item.

- Section 2-7-108 states, "If a contract is awarded to a respondent who has violated this article, the contract is voidable by the City." We recommend clarification of who within the City has the ability to void a contract.
- Section 2-7-101(4) (renumbered in the draft ordinance as 2-7-101(8)) defines Respondent. We recommend further discussion within the ordinance or rules of who is *not* a Respondent, to ensure that members of the public know what type of contact they can have with the City without violating the *Anti-Lobbying and Procurement* no-contact guidelines.
- Proposed section 2-7-104(E) addresses communications between Respondents and the City, and mentions that Respondents must direct suggestions or complaints to the authorized contact person. We recommend further discussion within the ordinance or rules of what constitutes a permissible suggestion or complaint.

In 2007, the City Council enacted Ordinance 20071206-045, which added a new Article 6 to Chapter 2-7 of the City Code. Staff developed and published rules providing for the enforcement of the Ordinance in 2008.

During the past four years of administering the ordinance, staff has received many questions and requests for clarification. As a result, staff has extensively reviewed the terms and language in the ordinance and is recommending clarifications and modifications to the ordinance to ensure increased transparency and ease of administration and interpretation.

Recommended revisions fall in several broad categories:

- Consistency: Staff recommends revising certain defined terms to improve consistency of the ordinance.
- Applicability: A new section provides specific guidance on the applicability of the ordinance. The revision provides that procurements requiring Council approval are covered by the ordinance, but that opportunities to compete for City social service funding, City cultural arts funding, City (including federal and state) block grant funding, and the sale of rental property are not covered by the ordinance unless Council specifically directs otherwise. Further, the proposed revision clarifies that anyone entering into a competitive acquisition with the City voluntarily agrees to abide by the ordinance. Last, campaign contributions are not considered representations under the terms of the ordinance.
- Flexibility: When procurements need to be expedited, such as for a public health or safety, the proposed revision allows the Purchasing Officer, Director of Contract and Land Management Department, or other properly delegated procurement authority to approve communication between the bidder / proposer and additional City staff outside the Authorized Contact Person.
- Duration: As originally enacted, sixty (60) days are provided for resolicitation activities. This amount of time is not sufficient for certain large projects, and staff recommends that the no-contact period for reissuance be lengthened to ninety (90) days.
- Communication with Council and Staff: The current ordinance promotes transparent and responsive government. Currently complaints regarding the solicitation process are forwarded to Council. Staff recommends clarifying this activity by not forwarding complaints to Council that promote one respondent over another, disparage a respondent, or amend a response already received from a respondent. Staff also recommends improved definition of the process for submitting procedural questions, including that nothing prohibits city employees or city officials from communicating as necessary for procedural questions.
- Reporting and Enforcement: The process for reporting violations has been revised to require notification of the authorized contact person in writing as soon as practicable about any possible violation. The Purchasing Officer, Director of Contract and Land Management, or other properly delegated procurement authority will

disqualify a respondent if the authority finds that the vendor violated any provision of the ordinance and that a respondent will be debarred by the Purchasing Officer if they violate the ordinance more than twice within a sixty (60) month period.

As a result of the first reading by Council, staff publicly posted revised ordinance enforcement rules for public comment on Friday, October 21, 2011. The public comment period for rules is thirty-one (31) days; comments will be received, reviewed and incorporated, with a goal of publishing the adopted rules along with the revised ordinance effective December 1, 2011.